S.B. CIVIL WRIT PETITION NO. 2463/2002
(NIRMAL CHOUBISA VS. STATE & ORS.)

DATE OF ORDER : 14.7.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Pushpendra Singh for the petitioner.
Mr. B.L. Tiwari, Dy. Government Advocate.

By an advertisement dated 13.6.1998, the Zila Parishad, Udaipur invited applications for the purpose of appointment to the post of Physical Instructor /Teacher Grade III. The petitioner considered himself eligible and desirous to be appointed as Teacher Grade III, submitted an application in pursuant to the advertisement dated 13.6.98. The Zila Parishad, Udaipur in accordance with the policy then existing for determining merits of the aspirants allowed bonus marks to the petitioner on basis of residence. The bonus marks granted while determining merit on basis of residence were declared illegal by Full Bench of this Court in the case of Deepak Suthar and that acquired finality by the judgment dated of Supreme Court in Kailash Chandra's case. The Hon'ble Supreme Court in the case of Kailash Chandra (supra) directed the Government of Rajasthan and also to all the Zila Parishads within State of Rajasthan to prepare merit list of the Teacher/Physical Instructors afresh by deducting the bonus marks taken into consideration for making merit list for the purpose of

appointment on the posts referred above. However, it was made clear by the Hon'ble Supreme Court that the appointments already made by giving bonus marks shall not be disturbed and a fresh merit list is required to be made only against the existing vacancies. As a consequence of withdrawal of bonus marks, the merit position of the petitioner is under laid and, therefore, the appointment was not given to him. Being aggrieved by the same, the writ petition is preferred by the petitioner.

It is contended by counsel for the petitioner that as a consequence of under landing merit position at one hand, appointment is denied to him, whereas there are certain other persons who are having less marks than the petitioner are allowed to be continued in service.

Reply to the writ petition has been filed on behalf of the respondents. In reply, it is stated that the bonus marks were allowed to the petitioner were withdrawn in view of the directions of this Court as well as the directions given by the Hon'ble Supreme Court. It is also stated that not a single person with less merit than the petitioner is employed after getting fresh merit list prepared. Whosoever the person having marks less than the petitioner was appointed prior to the judgment of the Supreme Court in the case of Kailash Chandra and appointments

of those persons were protected by apex court.

Heard learned counsel for the parties.

In view of the fact that not a single person at lower pedestal in the merit list is given appointment after the judgment of the Hon'ble Supreme Court in Kailash Chandra's case (supra), I do not find any merit in the contentions advances by counsel for the petitioner. It may be true that the persons having less marks would have been given appointment prior to judgment of the Hon'ble Supreme Court in Kailash Chandra's case (supra), while taking into consideration the bonus marks, but on that basis no relief can be granted to the petitioner as such appointments were protected by the Hon'ble Supreme Court.

In view of it, the writ petition stands dismissed.

(GOVIND MATHUR)J.

Anil/